

AO 440 (Rev. 10/93) Summons in a Civil Action -SDNY WEB 4/99

RETURN OF SERVICE*Service of the Summons and Complaint was made by me¹

DATE

May 2, 2007 at 3:40 p.m.

NAME OF SERVER (PRINT)

Ontry Patten

TITLE

Process Server

Check one box below to indicate appropriate method of service

☐

Served personally upon the defendant. Place where served: _____

☐

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

☐

Returned unexecuted: _____

☒Other (specify): Service on Earth Biofuels, Inc., was effectuated by personally serving
Cory Steele, Managing Agent duly authorized to accept service. Service was made at Capitol
Services, Registered Agent, 615 S. DuPont Highway, Dover, DE 19901.**STATEMENT OF SERVICE FEES**

TRAVEL

SERVICES

TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on May 2, 2007
Date

Signature of Server

c/o Court Support, Inc.
1891 Hillside Avenue

Address of Server

Williston Park, NY 11596

* Also Served:

Rule 7.1 Statement; Individual Practices of Magistrate Judge Maas; Individual Practices of Kenneth M. Karas; and Civil Cover Sheet

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

AFFIDAVIT OF SERVICE

**UNITED STATES DISTRICT COURT
Southern District of New York**

Index Number: 07 CV 3434

Date Filed: 4/30/2007

Plaintiff:

**EXCALIBUR LIMITED PARTNERSHIP and WHALEHAVEN CAPITAL
FUND LTD.,**

vs.

Defendant:

EARTH BIOFUELS, INC.,

For:

Herrick, Feinstein LLP
Two Park Avenue
New York, NY 10016

Received these papers to be served on **EARTH BIOFUELS** located at **3001 Knox Street, Suite 403, Dallas, Texas 75205.**

I, Gary Thornton, being duly sworn, depose and say that on the **1st day of May, 2007 at 3:15 pm, I:**

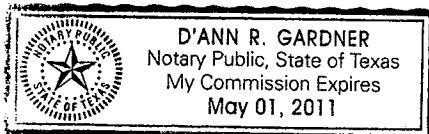
Personally served Earth Biofuels, by delivering a true copy of the **Summons in a Civil Case, Complaint, Civil Cover Sheet, Rule 7.1 Statement, Individual Practices of Kenneth M. Karas, Individual Practices of Magistrate Judge Maas** to Tommy Foltz, President, as authorized to accept on behalf of the above named Entity.

Description of Person Served: Age: 35, Sex: M, Race/Skin Color: Caucasian, Height: 6'0", Weight: 180, Hair: Blondish, Glasses: N

I am over the age of 18, am not a party in the above action, and am a Certified Process Server, in good standing, in the jurisdiction in which the process was served.

Subscribed and Sworn to before me on the 2nd day of
May, 2007 by the affiant who is personally known to
me.

D'Ann R. Gardner



Gary Thornton *SEN 1228*
Gary Thornton
Process Server

Our Job Serial Number: 2007001846
Ref: 07 CV 3434

United States District Court

SOUTHERN

DISTRICT OF

NEW YORK

EXCALIBUR LIMITED PARTNERSHIP
and WHALEHAVEN CAPITAL FUND LTD.,

Plaintiffs,

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

EARTH BIOFUELS, INC.,

Defendant.

07 CV 3434

TO: (Name and address of defendant)
EARTH BIOFUELS, INC.
3001 Knox Street, Suite 403
Dallas, Texas 75205

JUDGE KARAS

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

HERRICK, FEINSTEIN LLP, 2 Park Avenue, New York, New York 10016

an answer to the complaint which is herewith served upon you, within THIRTY (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

DATE

APR 30 2007

(BY) DEPUTY CLERK